IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

JESSICA A SAHAGUN
Claimant

DOLGENCORP LLC
Employer

APPEAL NO: 17A-UI-12034-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/22/17
Claimant: Respondent (6)

Iowa Code § 17A.12(3) – Default Decision
Iowa Admin. Code r. 871-26.14(7) – Dismissal of Appeal on Default

STATEMENT OF THE CASE:

The employer filed an appeal from the November 14, 2017, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on October 10, 2017 for no disqualifying reason. A notice of hearing was mailed to the parties' last-known addresses of record for a telephone hearing to be held at 9:00 a.m. on December 13, 2017. A review of the Appeals Bureau's conference call system indicates that the employer/appellant failed to respond to the hearing notice instructions to register a telephone number at which a representative could be reached for the hearing. Claimant Jessica Sahagun registered a telephone number for the hearing, but was not available at that number at the time of the hearing. Based upon the employer/appellant's failure to participate in the hearing and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

Should the appeal be dismissed based upon the employer/appellant not participating in the hearing?

FINDINGS OF FACT:

The employer is the appellant in this matter. The employer was properly notified of the appeal hearing set for 9:00 a.m. on December 13, 2017 through the hearing notice that was mailed to the employer's last-known address of record on November 27, 2017. The employer failed to comply with the hearing notice instructions to register a telephone number at which a representative could be reached for the hearing. The employer did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The November 14, 2017, reference 01, decision allowed benefits to the claimant provided she was otherwise eligible and held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on October 10, 2017 for no disqualifying reason.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures Act at Iowa Code § 17A.12(3) provides in pertinent part:

> If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. … If a decision is rendered against a party who failed to appear for the hearing and the presiding officer is timely requested by that party to vacate the decision for good cause, the time for initiating a further appeal is stayed pending a determination by the presiding officer to grant or deny the request. If adequate reasons are provided showing good cause for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If adequate reasons are not provided showing good cause for the party's failure to appear, the presiding officer shall deny the motion to vacate.

Iowa Administrative Code rule 871-26.14(7) provides:

> (7) If a party has not responded to a notice of telephone hearing by providing the appeals bureau with the names and telephone numbers of the persons who are participating in the hearing by the scheduled starting time of the hearing or is not available at the telephone number provided, the presiding officer may proceed with the hearing. If the appealing party fails to provide a telephone number or is unavailable for the hearing, the presiding officer may decide the appealing party is in default and dismiss the appeal as provide in Iowa Code section 17A.12(3). The record may be reopened if the absent party makes a request to reopen the hearing in writing under subrule 26.8(3) and shows good cause for reopening the hearing.
>
> a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.
>
> b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party.
>
> c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

Iowa Administrative Code rule 871-26.8(4) provides:

> (4) A request to reopen a record or vacate a decision must be made in writing. If necessary, the presiding officer may hear, ex parte, additional information regarding the request for reopening. The granting or denial of such a request may be used as grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

The employer/appellant appealed the representative's decision but failed to participate in the hearing. The employer/appellant has therefore defaulted on its appeal pursuant to Iowa Code §17A.12(3) and Iowa Admin. Code r. 871-24.14(7), and the representative's decision remains in force and effect.

If the employer/appellant disagrees with this decision, pursuant to the rule, the employer/appellant must make a written request to the administrative law judge that the hearing be reopened within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the end of this decision and must explain the good cause that prevented the employer/appellant from participating in the hearing at its scheduled time.

DECISION:

The November 14, 2017, reference 01, decision is affirmed. The decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on October 10, 2017 for no disqualifying reason, remains in effect.

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James E. Timberland
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Decision Dated and Mailed

jet/rvs